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# **Module 9:**

## **Natural Resource Assessment and Damages (NRD)**

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### **Module Objectives**

- ❑ Identify what resources are included in NRD
- ❑ Identify what damages are excluded from NRD
- ❑ Identify the federal agency responsible for issuing resource damage assessments
- ❑ Identify federal trustees
- ❑ Identify how natural resources damages are calculated
- ❑ State DOE policy concerning natural resource damage assessment and the RI/FS.

# **CERCLA Establishes NRD**

- ❑ **CERCLA establishes liability for releases of hazardous substances causing injury to, destruction, or loss of natural resources**
- ❑ **Resources must be public property (or held in trust by any State, local government, foreign government, or Indian Tribe)**
- ❑ **Resources include land, fish, wildlife, biota, air, water, groundwater, or drinking water**

### **Certain Damages are Excluded**

- ❑ Those specifically identified as an irreversible and irretrievable commitment in an EIS or comparable environmental analysis
- ❑ Those wholly occurring before enactment of CERCLA
- ❑ Injury that resulted from any federally permitted release

### Key Elements

- ❑ CERCLA and NCP give trustees a non-discretionary responsibility to assess damages for injuries
- ❑ Regulations are set forth by Department of Interior (many challenges to their economic valuation methods have occurred)
- ❑ Damages = restoration costs + assessment costs + compensable value

### **Who Are Trustees?**

- ❑ **Secretaries of Defense, Interior, Agriculture, Commerce, and Energy**
- ❑ **States**
- ❑ **Tribes**
- ❑ **DOE is both a trustee but is also liable for natural resource damages as a responsible party under CERCLA**

### **Timeframes for NRD**

- ❑ **CERCLA 113(g) establishes statute of limitations for damage claims at NPL sites and Federal facilities**
  - **An action for damages must be commenced within 3 years after the completion of the remedial action (excluding operation and maintenance)**
  - **Ongoing legal and Congressional attention exists on implementing and interpreting this provision**

### **DOE Actions on NRD**

- ❑ **DOE policy is to integrate natural resource concerns early into the investigation and remedy selection process to minimize unnecessary resource injury**
- ❑ **Formal and informal mechanisms are in place to work with natural resource trustees at many DOE sites, including those with highest estimated restoration costs**



### **Estimates of DOE Liability**

- ❑ **FY97 Defense Authorization Act required DOE to study its NRD liabilities**
  - **Department estimated liabilities between \$1.4 billion and \$2.5 billion**
  - **1996 GAO report estimated liabilities for DOE of between \$1.7 billion to \$24.9 billion**
  
- ❑ **Both applied ratios of past damage awards to response costs at private sector sites**

### **Estimates of DOE Liability (Con't)**

- ❑ **Each study was based on limited data and faced significant uncertainties**
  - **No history of NRD claims at DOE sites**
  - **No evaluation of data on potential injuries to natural resources at DOE sites after response actions are complete**
  - **In fact, few DOE response actions have been selected, implemented, and completed at DOE sites at this time**

### **Other Unresolved Issues**

- ❑ **Legal Uncertainties**

- How federal ownership affects State trustees
- How Indian treaty rights affect Tribal trustee rights

- ❑ **Precedent (if any) set by recent large private sector claims**

- ❑ **Uncertainty in estimates of DOE's restoration program scope and costs**

### **Module Summary**

- ❑ CERCLA establishes liability for releases of hazardous substances causing injury to, destruction, or loss of natural resources
- ❑ Natural Resource Damages= restoration costs+ assessment costs+ compensable value
- ❑ CERCLA and the NCP authorize the designated trustees to assess damages for injury to, destruction of or loss of natural resources on lands under trustees' management or protection
- ❑ Regulations are set forth by the Department of the Interior